

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

SEP 17 2015

Clerk, U.S. District Court
District Of Montana
Missoula

STATE OF MONTANA,

CV 15-107-M-DLC-JCL

Plaintiff,

ORDER

vs.

WILLIAM MICHAEL WINDSOR,

Defendant.

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation in this case on August 20, 2015, recommending denial of Petitioner William Michael Windsor's motion to proceed in forma pauperis and dismissal of Windsor's complaint for lack of jurisdiction. Because Windsor did not object to Judge Lynch's Findings and Recommendation, he waived his right to de novo review. 28 U.S.C. § 636(b)(1). Thus, the Court reviews for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). The Court adopts Judge Lynch's Findings and

Recommendation in full, finding that they contain no clear error.

Judge Lynch did not clearly err that the Court lacks jurisdiction over the action under the *Rooker-Feldman* doctrine. *Rooker v. Fidelity Trust Co*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). On August 20, 2015, Windsor filed a “Notice of Appeal,” alleging that his constitutional rights were violated by the Montana Supreme Court when it twice denied Windsor’s requests to disqualify State District Judge James A. Haynes from presiding over a criminal litigation naming Windsor as defendant.

Windsor’s “Notice of Appeal” to the Court expressly seeks to appeal the decisions of the Montana Supreme Court; it is precisely the type of direct appeal or “de facto appeal” barred by *Rooker-Feldman*. *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010); *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003). Because Windsor cannot cure his pleading to give the Court jurisdiction, dismissal is proper, and it would be futile to afford Windsor an opportunity to amend his pleading. *See Leadsinger, Inc. v. BMG Music Publishing*, 512 F.3d 522, 532 (9th Cir. 2008).

Accordingly, IT IS ORDERED that Judge Lynch’s Findings and Recommendation (Doc. 3) are ADOPTED IN FULL. Windsor’s motion to proceed in forma pauperis (Doc. 1) is DENIED and this action is DISMISSED.

Dated this 17th day of September, 2015.


Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court